

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

REALTIME DATA LLC d/b/a IXO,

Plaintiff,

v.

ORACLE AMERICA, INC.,

Defendant.

Civil Action No. 6:16-cv-088-RWS-JDL

JOINT STIPULATION

WHEREAS, on August 12, 2016, and August 16, 2016, Defendant Oracle America, Inc. (“Oracle”) served subpoenas *ad testificandum* on non-parties Sterne, Kessler, Goldstein & Fox PLLC (“Sterne Kessler”) and Mr. Michael V. Messinger, respectively, seeking deposition testimony regarding the conception and reduction to practice of the inventions in the patents asserted in the above-captioned case;

WHEREAS, on September 7, 2016, Sterne Kessler and Mr. Messinger jointly moved in the U.S. District Court for the District of Columbia to quash the subpoenas on the basis that, *inter alia*, the subpoenas sought privileged communications between Sterne Kessler and Plaintiff Realtime Data LLC (“Realtime”), *see In re Non-Party Deposition Subpoenas*, 1:16-mc-01902 (D.D.C.);

WHEREAS, without conceding their respective positions, the parties wish to enter into this stipulation in order to resolve this dispute without unnecessary court intervention;

Realtime and Oracle, by and through their respective counsel, stipulate as follows:

Definitions

1. “Asserted Patents” means U.S. Patent Nos. 8,643,513, 7,415,530, 9,116,908, 6,597,812, and 9,054,728.
2. “Prosecution Counsel” means any attorney or patent agent at Sterne Kessler who prosecuted or assisted in prosecuting the Asserted Patents, including, but not limited to, Mr. Michael V. Messinger.
3. “Texas Litigation” means the above-captioned case.

Stipulations

1. Oracle’s subpoenas *ad testificandum* to non-parties Sterne Kessler and Mr. Michael V. Messinger are hereby withdrawn.
2. All documents of which Prosecution Counsel is aware relating to the date of conception or pre-filing diligence in the reduction to practice of the inventions claimed in the Asserted Patents are privileged or have been produced. All communications of which Prosecution Counsel is aware relating to the date of conception or pre-filing diligence in the reduction to practice of the inventions claimed in the Asserted Patents are also privileged or have been produced.
3. In the Texas Litigation, Realtime will not seek to rely upon the content or existence of any privileged documents or communications with or in the possession, custody, or control of Prosecution Counsel to prove or corroborate the date of conception or reduction to practice of the alleged inventions claimed in the Asserted Patents.
4. In the Texas Litigation, Realtime will not waive the attorney-client privilege with respect to any privileged documents or communications with Prosecution Counsel relating to the

date of conception or pre-filing diligence in reduction to practice of the alleged inventions claimed in the Asserted Patents.

5. In the Texas Litigation, Realtime will not seek to rely upon any communications with Prosecution Counsel to prove or corroborate the date of conception or pre-filing reduction to practice of the alleged inventions claimed in the Asserted Patents.

6. Neither Michael V. Messinger nor any other Prosecution Counsel or representative from Sterne Kessler will testify in the Texas Litigation concerning the date of conception or pre-filing diligence in the reduction to practice of the inventions claimed in the Asserted Patents. At this time, Realtime does not foresee calling any Sterne Kessler representative to testify on any other issues in the Texas Litigation. In the event Realtime decides to offer testimony from a Sterne Kessler representative on an issue other than the date of conception or pre-filing diligence, and the Court determines that Realtime is not barred from offering such testimony, such individuals will be made available for deposition in advance of trial.

Date: November 23, 2016

Respectfully submitted,

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Counsel for Defendant Oracle

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on November 23, 2016.

/s/ Melissa R. Smith